

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSEPH A. FORAN,

Plaintiff,

Civil No. 07-909-ST

v.

Commissioner of Social Security Administration,
The Social Security Administration,

OPINION AND ORDER

Defendants.

STEWART, Magistrate Judge:

INTRODUCTION

Plaintiff, Joseph A. Foran (“Foran”), filed this action on June 20, 2007, against both the Commissioner of the Social Security Administration (“Commissioner”) and the Social Security Administration (“SSA”). In Count 1 of his Complaint, Foran seeks judicial review of a final

decision of the Commissioner denying his application for disability benefits under the Social Security Act, a claim over which this court has jurisdiction under 42 USC § 405(g). In Count 2, Foran alleges that the Commissioner and the SSA “failed, neglected and refused to respond favorably” to his request “pursuant to FOIA, of any and all letters, memos, or other writings . . . discussing the number of jobs issue that arises at step 5 of sequential evaluation.” Complaint, ¶¶ 7-8. Finally, in Count 3, Foran alleges that the Commissioner and the SSA violated his rights under the Fifth and Ninth Amendments to the United States Constitution by “pretending to or actually relying on Vocational Expert testimony about numbers of jobs that defendants know or should know to be unreliable.” *Id.*, ¶ 10.

All parties have consented to allow a Magistrate Judge to enter final orders and judgment in this case in accordance with FRCP 73 and 28 USC § 636(c). Defendants have now filed a Motion to Dismiss Counts 2 and 3 of Plaintiff’s Complaint (docket #9), to which Foran’s attorneys have declined to file a response. For the reasons that follow, the motion is granted, Counts 2 and 3 are dismissed, and the SSA is dismissed as a defendant.

DISCUSSION

This is one of several cases in which Foran’s attorneys have made identical claims on behalf of other social security claimants. Following the lead of Judge Ann Aiken in *Romans v. Astrue, et al.*, Civil No. 06-1331-AA (Opinion and Order, May 16, 2007) (docket #29), this court has routinely dismissed those claims because the FOIA claim is not ripe and the constitutional claim is not colorable. *See Conley v. Commissioner*, Civil No. 06-1332-KI (Minute Order, May 21, 2007) (docket #33); *Jaynes v. Commissioner*, Civil No. 06-1771-KI (Minute Order, May 21, 2007) (docket #28); *Randall v. Astrue*, Civil No. 07-37-BR (Order, May 30, 2007) (docket #26); *Ellis v. Commissioner*, Civil No. 07-209-MO (Order, June 26, 2007) (docket #23);

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Couch v. Commissioner, Civil No. 07-575-TC (Order and Opinion, August 9, 2007);¹ *Howard v. Commissioner*, Civil No. 07-365-PK (Minute Order, August 14, 2007) (docket #18).

A review of the record reveals that no different result is warranted in this case. Foran's FOIA appeal is still under review by the Office of Public Disclosure (Verzi Decl., ¶ 9), rendering Count 2 premature. His constitutional claims suffer from the same defects identified in *Romans* and *Couch*.

ORDER

For the above reasons, defendants' Motion to Dismiss Counts 2 and 3 of Plaintiff's Complaint (docket #9) is GRANTED and Counts 2 and 3 are DISMISSED. Additionally, because the only remaining claim (Count One) is alleged only against the Commissioner of the Social Security Administration, the Social Security Administration, which is named as a defendant with respect to Counts 2 and 3 is dismissed and the caption amended accordingly. All further pleadings should reflect this amendment to the caption.

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SCHEDULING ORDER - COUNT 1

¹ Judge Coffin expressly followed *Romans* only on the claim alleging a violation of the Ninth Amendment, but came to the same conclusion on the FOIA claim and the Fifth Amendment claim.

According to the initial scheduling Order, the Answer and Administrative Record were due November 28, 2007, but have not yet been filed. The Commissioner is granted an extension of time until January 7, 2008, to file its Answer and Administrative Record. In accordance with the scheduling Order, Foran's Opening Brief as to Count 1 of the Complaint is due not later than 60 days after service of the Answer, or by March 10, 2008. The Commissioner's Opposition Brief is due 60 days thereafter, or by May 9, 2008, and Foran's Reply Brief is due 14 days thereafter, or by May 23, 2008. Accordingly, Count 1 will be taken under advisement on June 2, 2008.

DATED this 6th day of December, 2007.

/s/ Janice M. Stewart
Janice M. Stewart
United States Magistrate Judge